IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA

CASE NO. 94-08273 (22)

HOWARD A. ENGLE, M.D., et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO COMPANY,
et al.,

Defendants.

_______________________________________/

DEPOSITION OF THOMAS V. DiBACCO, Ph.D
TAKEN ON BEHALF OF THE PLAINTIFFS

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August 24, 1999

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The deposition of THOMAS V. DiBACCO, Ph.D, in the above-entitled and numbered cause, was taken before me, TERRI BECKER, a Registered Professional Reporter and Notary Public for the State of Florida at Large, at 515 North Flagler Drive, Suite 200,, in the City of West Palm Beach,, Palm Beach County, in the State of Florida, beginning at the hour of 10:15 o'clock a.m., pursuant to the Notice in said cause for the taking of said deposition which is annexed to the court file herein, on behalf of the PLAINTIFFS in the above-entitled action pending in the above-named court.

The appearances at said time and place were as follows:

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BY: STEPHEN J. McCONNELL, ESQ.

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THEREUPON,

T H O M A S   V.   D i B A C C O

being by Terri Becker first duly sworn to tell the whole truth, as hereinafter certified, testified as follows:

DIRECT EXAMINATION

BY MS. MARKWITH:

Q Please state your name, for the record.
A Thomas V. DiBacco.
Q What is your address?
A [DELETED]

Q That's your home address, correct?
A That's my home address.
Q When were you first contacted in the Engle case?
A The Engle case, approximately four months ago, five months ago.
Q Who was the person that contacted you initially?
A I believe it was Mr. Allen Purvis.
Q Allen you said?
A Allen Purvis, middle initial R.
Q Which firm is he with?
A At the time he contacted me, he was a

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member of Shook, Hardy and Bacon.

Q Did he contact you in person, by telephone?

A I think he called me.

Q Did you know Mr. Purvis prior to this contact?

A Yes.

Q When did you first have contact with Mr. Purvis?

A In 1995.

Q Was that in relation to a tobacco case?

A Not a specific case.

Q When Mr. Purvis first contacted you, did you know him prior to that time, that first call?

A No.

Q Do you know where he got your name from?

A No.

Q What were you asked to review for this case?

A I was asked to review for this case, the information to which two plaintiffs, Angie Dellavecchia and Mary Farnan were exposed to, concerning the serious health risks of smoking

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and the difficulty of quitting smoking once begun, throughout their lives.

Q You were only asked to review the information as regards to Angie Dellavecchia and Mary Farnan; is that correct?

A When Mr. Purvis called he indicated those would be the likely plaintiffs that would be represented in the second phase of the Engle case.

Q What documents did you review in preparation for this?

MS. TYLER: Objection, vague.

A Can you be more specific?

Q I would like to know every document that you reviewed to prepare for your testimony.

A I started with newspapers. I moved on to magazines, textbooks, videos and film, educational literature, literature pertaining to slang, popular adages. I looked at songs. Those are the ones that come to mind.

Q What do you mean by "literature pertaining to slang"?

A What words were used to convey another meaning for the word "cigarette" or "smoking."

Q What specifically do you mean by

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"educational literature"?

A Literature such as that prepared by the American Cancer Society, the American Lung Association, American Heart Association, American Diabetes Association and other similar organizations.

Q Can you please explain what you mean by "popular adages"?

A That put in another phrase or term, words used to connote smoking cigarettes.

Q What time period were you asked to look at these materials?

A I was asked to look at these materials that would cover the lifetime of these two plaintiffs.

Q What was the earliest period that you looked at materials from?

A I looked at material from the 1940's, a few from the 1930's, but mostly from the 1940's; when the first plaintiff, Angie Dellavecchia, was born.

Q What was the most recent information you looked at, datewise?

A Well. I read the Financial Times of August 16, 1999. It is an ongoing project. I do

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not stop my research. I read The Wall Street Journal this morning, New York Times. It is an ongoing project.

Q The materials you reviewed, did you collect those yourself?

A I collected and reviewed the materials myself. I also had the assistance of my wife, Dr. Mallie Z. DiBacco.

Q Were any materials provided to you from the defendants?

A I asked for several documents that I could not procure elsewhere.

Q What were those documents?

A I asked, first of all, for the depositions of the two plaintiffs.

Q Anything else?

A I also asked for the depositions of their children and family members.

Q Did you review all of those materials?

A I did.

Q Aside from those depositions that you just listed, were there any other depositions in this case that you've read prior to today?

A Yes, I asked for more materials. I asked for the depositions of friends who were

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alluded to in the depositions of the two plaintiffs and who might be deposed.

Q Did you read any depositions of anyone else besides the ones you already listed, which was Mary Farnan, Angie Dellavecchia, the children and family?

A I read the children. There were two children who were deposed. From Mrs. Farnan, it was her daughter, Charlen. Her son's name is Kevin and as I recall a third child, Kaylin, who is too young to be deposed. She is only nine. I read the depositions of two children of Angie Dellavecchia. That was Jeanine, who is now Jeanine Stacey. She is married, and the deposition of her son, James.

Q You said you requested depositions of friends of theirs? Did you read any other depositions?

A I read, I think they might be described -- I said family, too. I read the deposition of is Celene Stevens, who is the twin sister of Mary Farnan.

Q Anyone else?

A Yes, I requested the deposition of Dr. Shukla, who was a physician at Seven Rivers

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Community Hospital because he had been referenced as an individual who provided anti-smoking admonitions to Mrs. Farnan. I requested the deposition -- rather the testimony in the phase one of Engle of anyone who may have been a historian for the plaintiffs' side and I was given the trial testimony of Mr. Eric Solberg. I was also given and I requested the testimony of Lacy Ford, historian, who testified in this case.

Q Aside from Eric Solberg and Lacy Ford, did you review any other trial testimony from this case?

A To the best of my knowledge, no.

Q Did you review the depositions of Eric Solberg and Lacy Ford?

A To the best of my knowledge, no.

MR. HOAG: Can you read back the last question and answer?

THE COURT REPORTER: Certainly.

(The record was read.)

Q What are the conclusions that you've reached with respect to Mary Farnan?

A I have concluded with reasonable historical certainty that Mary Farnan, during the course of her lifetime, was exposed to

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information of the serious health risk of smoking and the difficulty of quitting smoking once started.

Q Can you define "reasonable historical certainty"?

A That's a professional phrase that's used to define what historians believe to be an adequate conclusion based upon adequate evidence.

Q What do you mean by the term "exposed to"?

A That information was in the community, in their homes, in their daily personal lives, in their post school activities, in their school activities, in their leisure time activities.

Q Does that mean that Mrs. Farnan read any of those materials?

A It means that Mrs. Farnan, like any other historical person who is being studied, is studied in the context of trying to recreate her life. A historian recreates a lifetime based upon information that is in that person's environment during the course of her life. Since we lack video cameras, we have to reconstruct the life. Then we make reasonable conclusions based

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upon that brief construction.

Q Do you know whether Mrs. Farnan read any of the materials that you've reviewed?

A We know that Mrs. Farnan admitted in her own testimony, deposition, rather in her own deposition, excuse me, that she had been exposed to certain facets of information. Those were admitted in terms of the deposition.

Q Do you know if Mrs. Farnan read any of the materials that you reviewed?

A Again, my answer is that I recreate a scene. I do not have a videotape, and we do know, to give you one example, that the textbooks that she used in her school, which were approved by the state, were textbooks that under Florida law she was required to read. There is an example of an illustration of that.

Q Do you know if Mrs. Farnan read any materials you reviewed? "Yes" or "no"?

MS. TYLER: Objection, asked and answered.

MR. McCONNELL: Objection.

MR. HOWARD: Objection.

A I can't give you a "yes" or "no." I've given you my answer.

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Q You say in your disclosure that you're going to testify about the materials that, in dealing with Mary Farnan still, that Mrs. Farnan was exposed to, regarding the health risks of cigarette smoking. What were the known risks of cigarette smoking in the 1940's?

MR. McCONNELL: Objection, vague.

A There had been studies since the 19 -- early 1900's, scientific studies which implicated smoking with a series of diseases. More importantly public awareness about the association of smoking and disease was even more advanced than that of the scientific medical community findings. Cigarettes from their initiation had been described as coffin nails.

Q You used the term "coffin nails." Can you identify specific publications where that was mentioned?

A It is first used, also on our production list there, you will find a first use of the term in a newspaper that I found in the Capital Times, which I believe was published in 1886 and in that particular article it referenced the coffin nails of our youth, which suggests from reading the article that it even preceded the 1886 date.

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Q What is capital times? Is that a newspaper?

A That's a newspaper. It is in Annapolis, Maryland. It is the capital city of the State of Maryland.

Q We were talking about the 1940's and you mentioned the use of coffin nails. Can you name specific publications in the 1940's that were using the term "coffin nails"?

A I preface my remarks about coffin nails with the statement that there were some scientific studies already under way that the coffin nail designation had been used much earlier and was widespread by the '40's. The scientific studies, there had been a physician, I believe in Argentina, who in 1919 did work. When Dr. Alden Oschner was a young medical student at Washington University in St. Louis, he had also done work with respect to the area of cancer, lung cancer and smoking, 1938 study by Dr. Perlman, Johns Hopkins University had shown a statistical correlation of smoking and longevity.

Q These were all publications?

A Yes, disseminated in the press.

Q In the press?

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A In the press. In the press. Which would include newspapers, magazines.

Q Can you identify any newspapers in Florida where those articles you mentioned were disseminated?

A Remember my research began, as I indicated to you, in the 1940's but the continuation of the studies by Oschner, Hammond, Raymond Pearl and others were widely disseminated and new studies in the 1950's, in fact there was a literal explosion of scientific studies in the 1950's with regards to smoking and lung cancer. If you like I can name some of them for you.

Q If you can name some specific newspapers in Florida.

A Yes, in fact they are on our production list. You will find references to these studies, Hammond-Horn, Dr. Cuyler Hammond, American Cancer Society, the Dole-Hill Report (phonetic). Dr. Cameron's report. All of these are referenced in the early 1950's on the production list.

Q Do you have a copy of this?

(Indicating.)

A I do not.

Q If I give you this copy that was just

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provided to me this morning, could you look at it and point out specifically Florida publications?

A Sure.

(Handing.)

I would be happy to. Can you give me a minute?

Q Sure.

A May I begin and go place to place?

Q Sure.

A Miami Herald, 2/6/1955, Miami Herald 2/7/1955. Miami Herald 2/11/1955. Miami Herald 2/24/1955, Miami Herald 2/28/1955. Miami Herald March 11, 1955. June 3, 1955 Miami Herald. June 7, 1955 Miami Herald. June 29, 1955 Miami Herald September 13, 1955 Miami Herald. September 14, 1955 Miami Herald. November 30, 1955 Miami Herald. December 2, 1955 Miami Herald.

Q Okay. I know your list is probably 50 something pages long?

A It is.

Q I don't need you to list every single one on there.

A Do you want me to stop?

Q Yes, please.

Do you know if either Mrs. Farnan or

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Mrs. Dellavecchia subscribed to the Miami Herald in 1955?

A I chose the Miami Herald for Mrs. Farnan. Mrs. Farnan was born on July 25, 1955. She spent the first six years of her life with her parents in the area of Loxahatchee, Florida. She was born in Coral Gables. That area is in proximity, close proximity to Miami, so the historian, and I am the historian, chose to try to recreate in that home of the Farnans, wasn't called the Farnans then, it was the Lambs. She was Mary Josephine Lamb. To recreate what that American family would have been exposed to.

Q Do you know if in the first six years of her life Mrs. Farnan read any newspapers?

A Again, newspapers were not provided for the purpose of identifying a video tape camera in their kitchen, in their living room, in their den. Rather it was designed to look at what information a family would have been exposed to, what they may have read, what they may have discussed with young Mary Josephine Lamb, and this is just one of many areas.

Q Do you know what television programs Mrs. Farnan was exposed to in the 1950's?

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A She indicated in her testimony that she didn't know whether they had a television in Loxahatchee, so I didn't pay too much attention to that although her testimony is not illustrative of a typical American family because by the 1950's, late 1950's, more than 90 percent of American homes had television. She said she couldn't remember, so I didn't place a lot of attention on television, at least then.

Q What about in the 1960's, do you know what television programs were --

A Again, historian attempts to recreate, my job is recreation, try to set the scene of this family now living in a totally different place in Florida, in the town of Inglis, Florida, 700 miles removed from Miami. By this time Mrs. Farnan is in school so she has textbooks which are mandated, in terms of their contents by Florida law. We have newspaper, the different newspaper, which a family might subscribe to. We have organizations that the young Mary Josephine Lamb might belong to. We have churches that her family might have taken her to and we recreate as best as we can.

MR. HOAG: Move to strike the answer

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which was nonresponsive to the question.

MR. HOWARD: If you read back the record I think you will find that Dr. DiBacco began his answer before the questioner actually mentioned TV's. All the question said was "How about the 1960's?" But I think the caution is understood that maybe we ought to have complete questions out before we have answers.

MR. HOAG: The 1960's question was in direct reference to the '50's question which was only on television. So same statement. Move to strike the entire answer. Not responsive.

Q I would like to know if you know what television programs were popular in the 1960's.

A Some of these television programs were mentioned by the plaintiffs. One of the plaintiffs mentioned "I Love Lucy." There were programs relating to news special, the "See It Now" series which CBS regularly conducted. Some of the other programs that were referenced by the plaintiffs actually went beyond the '60's, to the '70's, as I recall, "Ponderosa," I don't recall if that was in the '60's... There were also

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special American Cancer Society public service announcements which were rendered during that time.

Q Do you know who the sponsor for "I Love Lucy" was?

A Offhand I'm not a devotee of television, but according to the plaintiff, I believe she argued the cigarette company was, but it ran for such a long time. I really don't know whether that was the case throughout the entire time.

Q Did you look or make any effort to try to find out who did sponsor these TV programs that were popular in the '50's and '60's?

A Remember my mandate, in terms of recreation. Television ads were a part of this scene. But I, although I'm not an advertising expert, I know that by the 1950's advertising is very widespread and Americans know that advertising is designed to sell products, and given that I did not find in these advertisements specific information relating to smoking and health dangers. The ads did not discuss this.

Q Does your response also apply to newspaper ads for cigarettes?

A Advertisements were part of the entire

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review process that I made, including newspapers and magazines. They were considered.

Q I asked you a minute ago, and I don't believe, although I'm not positive, if I got an answer on this: Did you make an effort to find out who sponsored the programs that were popular in the '50's or '60's?

MS. TYLER: Objection. Asked and answered.

A I did answer the question. I considered the programs aid, reference to the advertisements. I did not make a study beyond noting the programs referenced by the two plaintiffs.

Q How many cigarette ads did appear in the television programs that you looked at?

A I have no idea. I didn't make a count.

Q How many cigarette ads appeared in the newspapers and magazines that you reviewed?

A Again, the answer to the question is that I'm looking at the totality of the experience. Let me preface this remark by saying that by the 1960's both plaintiffs were going through school. They were mandated to read textbooks in health which told them in no

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uncertain terms to disregard cigarette ads with respect to making a choice about smoking.

MR. HOAG: I'm going to object to the answer as not responsive in any way to the question. The question was: How many newspaper ads did you look at?

MS. TYLER: Objection. John, he answered the question fully and completely and I would appreciate if you stopped moving to strike every time he answers with an answer that you don't like.

MR. HOAG: I would appreciate if you let me make my objection. Again, I move to strike. He didn't respond to the question in any way.

If you can actually answer the question she asked.

THE WITNESS: I answered to the best of my knowledge.

MR. HOAG: You have no answer as to how many ads there were?

MS. LUTHER: Who is taking the deposition?

MS. TYLER: Who is taking the deposition? Your heads together, passing

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notes, it is very confusing for the witness. Why don't we have one of you take it.

MR. HOAG: Just repeating the same question. He hasn't answered it. You all, by the way, make joint objections. Two of you just made this one, over each other, in fact.

MS. TYLER: Are you taking the deposition now? Who is taking the deposition? I don't want this witness to be tag-teamed here. That's not fair.

MR. HOAG: Are several of you going to make objections or one of you?

MR. HOWARD: Two different parties.

MR. HOAG: Which will make objections for the deposition?

MS. TYLER: We will all and objection for one counts as objection for all. That's different from multiple parties deposing a witness at one time.

MR. HOAG: I'm just clarifying that he hasn't answered her question.

MS. TYLER: Well, he has answered it. I suggest that we move on.

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MR. HOAG: I suggest that the let the witness answer.

THE WITNESS: I answered the question.

MS. LUTHER: The court reporter can read you his answer and you will be satisfied that it was answered.

MR. HOAG: Can you read back the last question that Maureen asked?

THE COURT REPORTER: Yes.

(The record was read.)

MR. HOAG: Clearly he didn't answer the question at all. Move to strike. If he doesn't choose to answer, the record will reflect he didn't answer the question as asked.

MR. McCONNELL: If you have a question, ask it please. The record reflects what it reflects.

MR. HOAG: We already did.

Q You referenced earlier textbooks that the plaintiffs were required to read in school. What were those specific textbooks?

A If you get my production list I will be happy to go through them. Would you like me to do that?

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Q The text books that you reviewed --

A Yes.

Q -- that you know that Mary Farnan and Angie Dellavecchia were required to read, are listed on your list that I was provided this morning?

A We did a study of the authorized textbooks in the State of New York and Florida which were approved by the state and the ones that were used we cannot identify the specific texts but we can identify the several texts that were approved for use and required to be used.

Q Can you tell me "yes" or "no" whether or not Mary Farnan or Angie Dellavecchia used those specific textbooks that you reviewed?

A One of them, to the best of our knowledge, was used by them in a specific time in a specific course, in a specific grade. The state laws mandated that they be taught. We don't know which one. But we do know that one of them, because these are the only available ones, to the best of our investigation, my investigation. And that of my wife.

Q You also mentioned newspapers. Can you identify specific newspapers that Angie

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Dellavecchia or Mary Farnan read?

A Yes, I did. By their own admission, both plaintiffs indicated that they did read the local newspaper. For Mary Farnan, that would be in all likelihood the Ocala Star-Banner, hyphenated, and it might also be the Tampa Tribune.

For Angie Dellavecchia it could be in her residency in various places in the State of New York, she lived from 1946 to 1962 in Hollis, New York in Queens, so the newspaper, the relevant ones would be The New York Daily News, The New York Times. From 1962 to 1964 she lived in Pahokee, New York and there again, The New York Times was reviewed. From 1964 to 1969 she lived in Middle Village, New York, again in Queens, and again The New York Daily News, and we also looked at the period after 1969 when she was married to Ralph Dellavecchia when they lived in North Babylon, which is in Long Island, and they reviewed Newsday, Long Island Press. 1984 Mrs. Dellavecchia and her husband moved to Port Richey and later New Port Richey, Florida, and she indicated very specifically that she did read the St. Petersburg Times during that period,

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where she did reside until her recent death.

Q Aside from the St. Petersburg Times, which you say Mrs. Dellavecchia identified as something she read, do you know if Mary Farnan or Angie Dellavecchia read any of these other newspapers that you reviewed?

MS. TYLER: Objection, asked and answered.

A Again, the recreation model I go back to, we can't videotape their living room. What she may have done in her living room, her bedroom, her kitchen, what she did when she got up in the morning, but we recreate, she indicated she read a paper. We found the papers, and we make reasonable and rational conclusions based upon those.

Q When did Mary Farnan indicate that she read newspapers? What time period did she indicate she was reading --

A When she was a young adult. She was married at -- she was married in 1972 for the first time.

MR. McCONNELL: I thought there might have been crossover between the witness and the attorney. I want to caution the witness

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to let the attorney finish her question
before you start answering.
THE WITNESS: I'm sorry.
A I beg your indulgence.
Q Do you have a specific date when Mary indicated that she read newspapers, besides saying "young adult"?
A She did not indicate specific dates for either her newspapers or her magazines. She referenced "Reader's Digest," "National Geographic" as being in her home. To the best of my recollection, she did not indicate specific dates.
Q Beside the St. Petersburg Times, are there any other newspapers that you're aware of that Angie Dellavecchia read?
A Again, from her testimony as I recall she alluded to the fact that she was a crossword puzzle junky, so to speak. She liked crossword puzzles, so that was a door to look at the crossword. She did them in the paper, she indicated.
Q Do you know what period of time Angie Dellavecchia read newspapers?
A She indicated that she was a

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stay-at-home mom from the time she was married in 1969. She had worked earlier at several places, Woolworth's, grocery store, Continental Can and when she was married in 1969 she became, soon thereafter, her first child was born in 1970 and she was a mom. She did some babysitting.

Q My question was: Do you know what time period she read newspapers, meaning dates?

A Well, given her infatuation with crossword puzzles, and she indicated that in her testimony, I did a study of all of the newspapers, throughout her adult life.

Q Is everything that you reviewed in preparing for the deposition on that list that you provided this morning?

A No, it would be impossible to provide you with everything I reviewed. I do not have the physical ability to get reams of microfilm of the New York Times or the volumes of Time Magazine or those of Newsweek or on into the papers, but these are all in the public domain.

Q Do you have a list of everything that you reviewed?

A I did not make a formal list.

Q Do you intend to review anything further

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besides what you've reviewed to date?

A I haven't finished. I'm going to Washington on Monday to continue my research.

Q Prior to your contact with the defendants in the Engle case, have you had contact with any of the defendants in this case?

A Repeat that. Excuse me.

Q Prior to when Mr. Purvis contacted you for the Engle matter, did you have contact with any of the defendants?

A These two defendants?

Q Any of the tobacco companies.

A Well, I'm not -- you mean in terms of all the attorneys or... I had -- I was contacted by Allen Purvis in 1995 and since that time I have been doing research on awareness. I met attorneys but most of my work is done in the confines of libraries, other repositories.

Q Have you ever testified for any of the defendants in this case?

MR. McCONNELL: Trial or deposition or anything?

MS. MARKWITH: Yes.

A In this case, the Engle -- this is my first appearance.

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Q I think the way I worded it was confusing. Have you ever testified for any of the defendants in this case, have you ever testified either in trial or deposition on their behalf?

A Yes. Thank you... Sorry.

Q When did you testify?

A I testified on -- in deposition, not testified, deposition, I was deposed on May 23, 1997, not by the defendants, though.

Q That was a tobacco matter?

A This was in the Broin case. I was deposed by Mary Margaret Schneider.

Q Have you given any other depositions in tobacco cases?

A No.

Q Have you given any trial testimony in tobacco cases?

A No.

Q Have you done research in other tobacco cases besides Broin and Engle?

A I have been doing ongoing research to be prepared for any Florida cases, Maryland cases, Washington, D.C. cases, that might arise.

Q Are there any other specific tobacco

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cases that you have been involved in? By that, I mean their name is Engle, Broin, for example?

MS. TYLER: Objection, vague?

A None of my research, ongoing research has led to a specific calling of me as a witness or naming me as a witness and going on to trial, because they have never come to fruition.

Q Have you done research for other tobacco cases?

MS. TYLER: Objection, asked and answered.

A It is ongoing research. No specific cases have come to a trial.

Q I'm not asking if the cases have gone to trial. I just want to know if you have done research on specific cases, aside from Broin and Engle?

A My answer is the best I can give you, ma'am. That is that I'm the quarterback historian prepared to go out when I'm called. I have not been so called as yet. Sorry, that's a poor analogy but I have been watching football.

Q What do you charge per hour?

A I charge $75 per hour for research.

Q What do you charge to testify?

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A I charge $125 to testify and for depositions.

Q Do you charge for your travel time?

A No.

Q Is $125 an hour what you intend to charge if you testify at trial in phase two of Engle?

A That's correct.

Q Do you plan to testify in the Engle case?

MS. TYLER: Objection.

MR. McCONNELL: Objection. Calls for a legal conclusion or a legal judgment of some sort.

A I don't know. If I'm asked. I don't know.

Q How many hours have you worked so far on the Engle matter?

A Let's see... I probably worked about... Between 150 and 200 hours, roughly. A little more, a little less. That's the best estimate I can give you.

Q How many hours have you worked on the Broin matter?

A That was two years ago. It wasn't much

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and it is in my deposition of May 23, 1997 and I simply have put that out of mind. But that figure is accurate.

Q How many hours have you worked in total on all the work you've done for the tobacco companies?

A Well, I can't put it to you in hours but I can give it to you in money terms, if that's acceptable.

Q That's fine.

A I've averaged 1995, 1996, 1997, 1998, about $12,000 a year, a little more, a little less... That's an average.

Q Is 1999 approximately the same?

A No, that will be bigger.

Q What does your wife charge per hour?

A She charges $55 an hour.

Q How many hours has she worked on these cases, on the tobacco cases in total?

A Excuse me?

Q The tobacco cases in total.

A I would guess that she has earned about a third of what I have earned... Maybe a little bit more, but around there. That's my best guesstimate in terms of the entire period.

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Q What are the number of hours she has put in on the Engle case so far?
A I would say about 100 -- over 100 hours, between 100 and maybe 120. Again, an estimate.
Q How many hours has she put in on the Broin case?
A To the best of my knowledge, none.
Q You stated that your income for 1999 from the work that you're doing for the tobacco companies will be larger than it has been for your average '95 through '98. How much larger will that be?
MR. McCONNELL: Objection, speculation.
A I can't project it.
Q How much larger is it so far?
A Thus far it is, the range that I gave you earlier, probably at least double, perhaps a little more than that. Maybe three times. Or that is to date. And these are estimates. Again, I apologize for that.
Q Prior to this deposition today, what lawyers have you met with regarding the Engle matter?
A I've met with Ms. Tyler, Mr. McConnell, and Mr. Howard, and I may have met with some

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others. I don't know how many others but these individuals I met with.

Q When was your most recent meeting?

A Yesterday.

Q How long did you meet?

A We met about seven, eight hours.

Q Where did you meet?

A In my home.

Q What did you discuss?

A We discussed preparation for today.

Q How many other times did you meet with lawyers prior to yesterday?

A Oh --

MS. LUTHER: Object to the form, vague.

A On the Engle case?

Q Yes.

A A few. I can't name.

Q Less than ten?

A Yes.

Q When was the first time you met with lawyers regarding the Engle matter?

A Oh, the first time, probably a few months ago. I said this started about four months ago. I think that's about it.

Q Which law firm have you had most of your

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dealings with in connection with this case?

MR. McCONNELL: Objection, vague.

MS. TYLER: Objection, vague.

A I don't deal with law firms. I am doing my research and I send Mr. Purvis a bill every month.

Q Outside of the tobacco cases, have you testified in any other cases?

A As you will know from my Broin deposition and my CV, I was a faculty member and Dean at American University and as I indicated in that Broin deposition, I had given depositions two or three with regard to faculty contract matters.

Q Those were the only times?

A That's it.

Q In those two cases those were depositions only or did those go to trial?

A I'm not certain. I can remember I was in trial once as a witness. As a -- giving testimony. I can remember it. I can remember the scene.

Q That was one of the faculty cases?

A I believe it was, yes.

Q What was the name of that case?

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A Oh, I have no idea. You're taking me back beyond my sphere of recognition. I don't know the case. It was a faculty member who was in court against the university.

Q It was in Washington, D.C.

A Washington, D.C. That I know.

Q What year was that?

A Had to be between the years I was the Dean, 1974 to 1981. And when it occurred during that period... I just don't know.

Q Were you testifying on behalf of the faculty member?

A In this case I was. He -- I was no longer -- I think I may have just left that position. In fact, the longer I think about it, I may have just left that position and it may have been in 1981 or '82. And I was testifying in his behalf and the trial came to a quick conclusion and it was settled during the midst of the trial. That I remember.

Q Have you ever done any writing or speaking about tobacco related issues?

A In terms of my articles for newspapers, I have had -- I've written several articles on tobacco in terms of history, since I am a

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historian. I have written about it in my -- a little bit about it in my textbook, history of the United States. I have done a video, history of the Notre Dame entitled "Legislating Morality."

Q Do you have a current list of all your publications?

A No, I don't.

Q Do you have any list at all of your publications?

A I decided years ago that with Lexis/Nexis, with other means of getting this material, that I have some, I don't have others, so I've literally spent no time to keep the scrapbook. But they are publicly available and that's the wonderful thing. If I want to look at my pieces that I can't find I can go to Lexis/Nexis, et cetera.

Q Did you say you have no list at all of your publications?

A I don't have an up-to-date list. When I first started teaching I used to keep a list.

Q That would have been back in the 1970's that you were keeping a list?

A No, 1965 I started to teach.

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Q When did you stop keeping a list?
A When it became burdensome. I just did not have the room to maintain a count and one of the problems that I have is that many, when I sell my articles I sell them for wire rights so if I sell a piece to the L.A. Times, they can put it in the L.A. Times wire. It can go out and be printed in many, many newspapers, and I can't keep track of that. Same with The Washington Post and other publications. Same with the Orlando Sentinel. They are owned by the Chicago Tribune so I sell them full rights. Where it ends up... I can't follow it. It is too time-consuming.
Q Did you stop keeping a list then sometime in the 1970's?
A I can't remember. I'm sorry.
(Pause in the proceedings.)
Q You mentioned a video that you did for the University of Notre Dame?
A Yes.
Q I would like to ask you a few questions about that. When did you make that video?
A I believe it is on my CV. See -- is it dated on there? Page 2, middle of the page.

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Q What would it be under?
A Media appearances.
Q I'm not seeing it on here.
(Handing to the witness.)
A No, this does not have it on it. I thought it was. It was done in 1996 or 7.
Q Who paid for that for the production of that video?
A I wasn't paid.
Q Who paid to actually produce the video?
A The University of Notre Dame.
Q Did they contact you to do that video?
A Yes.
Q What was the title of the video?
A "Legislating Morality."
Q What was in that video about cigarettes?
A There was a segment in the video relating to the decline in use of cigarettes by Americans, as more health education information was disseminated.
Q Was that one part of a larger context or was that the focus of the video?
A One part.
Q Do you have a copy of that video?
A I may. It was done three years ago. I

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may.

Q How long was the video?

A Twenty-eight minutes, 30 minutes.

Q When you worked on that video, did you inform the University of Notre Dame at that point that you were doing work for the tobacco companies?

A To the best of my knowledge, no.

Q Was that video shown anywhere?

A I don't know.

Q Did you produce that video by yourself?

A No.

Q Who else was involved?

A Strictly the University of Notre Dame, they did it.

Q Were there other professors involved?

A There were other interviews with professors.

Q Was your involvement in the video then just an interview that was done?

A It was an interview with bytes throughout.

Q Who originally contacted you about that video?

A Somebody from the University of Notre

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Dame.

Q What was the individual's name?

A I have no idea.

MR. HOAG: We request a copy of that video. We would appreciate it if you could see if you have it and provide it to us.

MR. McCONNELL: That request should be to the lawyers and we will take that request under advisement and respond appropriately.

Q Earlier you had mentioned newspaper articles you wrote on tobacco. What were those articles that you wrote, giving me the title and the date of them?

A I can't give you the date nor the title. I can give you my recollection of the subject matter.

Q Would those articles be included in this list you gave me?

(Indicating.)

A No.

Q Can you give me the title of a single article that you've written on tobacco?

A Not off the top of my head.

Q You mentioned that you wrote in your textbook, you wrote something about cigarettes in

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your textbook. When was your textbook published?

A 1992. For the first time.

Q What did you write about cigarettes in your textbook?

A We included, since it was a multi-authored text "King James' Blast To Tobacco."

We also included Surgeon General's report reference, 1964. There may have been other references. Those come to mind.

Q Did you include any cigarette advertisements in your textbook?

A To the best of my knowledge, no.

Q Have you prepared any reports on the work you've done to date, preparing for the Engle case?

A No.

Q What is in your file for the Engle case?

A Excuse me?

Q I would like to know what materials you have in your file for the Engle case.

MS. TYLER: Objection. Assumes facts not in evidence.

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A I have the production list and when I went through that list with you earlier, you'll note that while I covered articles, magazine articles and newspapers, I forgot to mention all of the government statutes for New York and Florida. You specifically asked me and I just remembered that that is part of that in terms of the statutes, the various states, Florida, New York. . . Regulations.

Q Regulations regarding cigarettes?

A Tobacco.

Q Did you say that is not included in this list?

A It is.

Q It is?

A Yes. When we went through that earlier, I don't think I so specified. I said "a long list."

Q So this list is everything, includes everything that is in your file for the Engle case; is that correct, or am I not understanding?

A That is the file that I have relative to my research. That's the only thing that I keep.

Q Going back to the Notre Dame video, do

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you know what department at the school put the video together?

A No, I don't.

Q How did they come to contact you to do that video?

A I don't know.

Q Do you know any historians at Notre Dame?

A Not specifically at Notre Dame, no.

Q Do you know any professors at Notre Dame?

A No.

Q Do you smoke?

A Not now. No.

Q Did you smoke?

A Yes.

Q How old were you when you started smoking?

MR. McCONNELL: Objection, scope.

A About 16.

Q How long did you smoke?

MR. McCONNELL: Can I just have a running series of objections in terms of scope, that this is not within his expertise, just give me a running objection

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and you can continue with your questions?

MS. MARKWITH: Yes.

MR. McCONNELL: Thank you.

A Repeat the question, please?

Q How long did you smoke?

A Until I was about 32, 33.

Q Why did you quit smoking?

A I was having problems projecting my voice as a speaker.

Q Did you stop smoking the first time you tried?

A Yes.

Q Does your wife smoke?

A No.

Q Did your wife ever smoke?

A No.

Q On your CV it says you have two children. Do your children smoke?

A No.

Q Have your children ever smoked?

A Yes.

Q Let's start with your daughter. Did your daughter smoke?

A Yes.

Q When did she smoke?

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A As I recall, as a teenager.
Q Is that when she started, as a teenager?
A (Witness nods.)
Q When did she quit?
A As a teenager.
Q How many years did she smoke?
A I don't know.
Q Did your son smoke?
A Yes.
Q When did he start smoking?
A As a teenager.
Q When did he quit?
A As a teenager.
Q Do you have any siblings?
A Yes.
Q Do any of them smoke?
A My brother, who is deceased, smoked for a while. My two sisters do not smoke.
Q Did your sisters ever smoke?
A No.
Q How long did your brother smoke?
A I don't know.
Q How old was he when he started?
A He's older. I don't know.

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Q What caused your brother's death?

A He died of diabetes.

Q What percentage of your time is devoted to doing work on the tobacco cases?

A Be specific. In the course of a day, a year, a month?

Q You can give me in the course of a year, just in general.

A On average for the years that I so stated earlier, 1995, 10 percent - 15 percent.

Q Have you ever been sued?

A No.

Q We received a supplemental disclosure on August 23rd stating you would testify as to the punitive damages stage of this case. Do you have any information or opinions regarding the financial resources of these defendants, the defendants in this case?

MR. McCONNELL: Objection, outside the scope.

A Repeat the question.

Q Do you have any information or opinions regarding the financial resources of the defendants in this case?

A No.

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Q Do you have any information or opinions regarding the net worth of the defendants in this case?

MR. McCONNELL: Same objection.

A No.

Q Do you have opinions or information about other punitive damages awards that have been assessed against Philip Morris, or any other tobacco company?

MR. McCONNELL: Same objection.

A No.

Q Since you don't have opinions on the issues of punitive damages, I will ask you what opinions you do have that you believe are related to the issue of punitive damages.

MS. TYLER: Objection to counsel's characterization.

A I don't understand the question. I'm not a lawyer.

Q What are your opinions on the issue of punitive damages?

A I'm not a lawyer. I have no opinions.

Q So in your supplemental disclosure which said you would be testifying as to punitive damages --

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MS. TYLER: Why doesn't counsel read the rest of the supplemental expert statement?
MS. MARKWITH: I don't have it with me.
MR. HOWARD: The beginning statement was "In the punitive damages phase, Dr. DiBacco would give testimony about certain subject matters." I don't think it said he would be testifying about punitive damages.
MS. MARKWITH: I just want it clear for the record that he won't be --
MR. HOWARD: We can give you a copy now. It is brief. You can read it now and ask whatever questions you want to.
MS. MARKWITH: That's fine.
Q Is it your understanding, Dr. DiBacco, that you will not be testifying as to punitive damages?
MS. TYLER: Objection, vague.
MR. McCONNELL: And calls for a legal conclusion.
A I frankly don't know what you're talking about.
MR. HOWARD: Here, counsel.
(Handing.)
MS. MARKWITH: Thank you.

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(Pause in the proceedings.)

Q I know I asked you specifically about Mary Farnan. I don't believe I asked you specifically about Angie Dellavecchia and what opinions you plan to give regarding your disclosure.

A Based upon my research, I plan to opine with a reasonable degree of historical certainty that Angie Dellavecchia, during her lifetime, was exposed to information regarding serious health risks of smoking and the difficulty of quitting once started.

Q Regarding the difficulty of quitting, what specific information are you referring to that Angie Dellavecchia was exposed to?

A Again, the recreation. We recreate from the knowledge that I have been able to derive from her lifetime, her life span. We recreate it, and that is what would happen, what information was she exposed to in terms of her home, her school, her church, her outside activities, the laws of the State of New York, the statutes and regulations of that state. Those are the State of Florida where she subsequently moved. All these and more with

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regard to literature, movies, video, songs, newspaper articles, magazines; recreating her lifetime and the information to which she was exposed.

Q Can you identify specific articles in the late 1950's that dealt about the issue of quitting smoking?

A I can do -- 9/15/1952, "How To Stop Smoking," Time Magazine.

Here is one as early as 1938, Reader's Digest, 8/1/38. "So Are You Going To Stop Smoking?"

Q Any article you would have would be on your list there? I don't want to take the time--

A Yes, 1954 Reader's Digest, November 1, 1954. They are all available.

MS. MARKWITH: I might only have one or two more questions but I just need a few minutes to look through my notes.

(Pause in the proceedings.)

Q You mentioned that there was additional research you planned to do in Washington. What specific research do you plan on doing?

A I am going to the National 4-H Council headquarters.

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Q National...
A National 4-H headquarters.
Q Is that all that you plan on doing?
A Yes.
Q What is it exactly that you plan on doing at the National 4-H headquarters?
A Research into that organization.
Q What does that have to do with the exposure of Mary Farnan or Angie Dellavecchia?
A Mary Farnan was a member of 4-H.
Q Aside from going to 4-H for research, is there any other research that you plan on doing?
MS. TYLER: Objection, vague.
A As I indicated earlier in this deposition, it won't be over. It is an ongoing... Ongoing research project.
Q Aside from going to 4-H, what specifically do you plan on doing in this further research that you mentioned?
A Continue my awareness research.
Q Which would involve what?
A Which would involve sources, other sources that help me recreate this model.
Q What, in your opinion, were the known risks of smoking in the 1940's?

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MS. TYLER: Objection, asked and answered.

MR. HOWARD: Asked and answered.

A I've indicated that in an earlier answer. I pointed to the studies that were done scientifically, as well as to the popular awareness. I think that whole passage I gave you earlier answers that question.

Q What, in your opinion, were the known risks of smoking in the 1950's?

MR. McCONNELL: Object, vague. Known by who?

A Again, I gave you illustrations of that from the 1950's. You asked me to read some, I did. And that was an example of those risks.

MS. TYLER: I would also note for the record that counsel asked the witness to stop reading because there were so many.

MR. HOAG: For the record, all you read were titles of articles. You never answered the question about what the known risks were. You read dates of articles and where they were published, nothing about content or what the known risks were. You didn't answer the question then. You haven't

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answered it now.

MR. McCONNELL: If that's a question, I object to it. If it is not, I object to it.

MR. HOAG: I also move to strike the answer related to risks because you haven't answered it yet. Nonresponsive to the question.

Q. Doctor, on your disclosure it says you will testify that both Mary Farnan and Angie Dellaveochia were exposed to information regarding the health risks of cigarette smoking as they were growing up in the various places where they lived.

What I would like to know from you is: What were those known risks during different time periods? In the 1940's, what were the known risks?

A. In the popular awareness field it was widely publicized that cigarettes were coffin nails. Tex Williams did a song entitled "Smoke Smoke Smoke That Cigarette." Number one on the Hit Parade 1947 or '48. Also by that time you had scientific studies that had been made by individuals that had had -- that I already

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mentioned Raymond Pearl 1948, Oschner had done research, Hammond-Horn. Dunhill, Dr. Cameron. There is an American Cancer Society study. All of that is on the list indicating the known risks with respect to longevity and disease.

Q Can you list to me the specific diseases that you believe Mary Farnan and Angie Dellavecchia would have been aware of as being associated with cigarette smoking in the 1940's?

A Repeat the question.

Q Can you list for me specific diseases that Mary Farnan and Angie Dellavecchia would have been aware of as being health risks of cigarette smoking?

A What years?

Q Start with the 1940's. I would like to break it down, 1940's, then 1950's, then 1960's.

MR. McCONNELL: I object to the extent the question asks about Mary Farnan's knowledge in the 1940's since she wasn't born then.

MS. MARKWITH: We will only discuss her knowledge after her birth.

A Textbooks in the 1940's and '50's pointed out that the Raymond Pearl study, that

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people who smoke, longevity, have spans that are shorter. Studies had already been done, promulgated in textbooks about emphysema. The relationship of smoking and lung cancer, these studies had already begun and they were included in textbooks. Similar references to cancer of the larynx. Similar references to heart disease. Constriction of blood vessels... And these have been referenced and are on the production list for the 1940's and '50's to name but a few. This is not an all inclusive list.

Q During the period of time from the 1940's through the 1960's, did the tobacco industry make either public statements or issue brochures or any type of information that refuted this information you were discussing on the health risks of cigarette smoking?

MS. LUTHER: Object to the form.

A Can you be more specific when you say "the tobacco industry"?

Q Any tobacco company or an entity such as the tobacco institute or CTR that's acting on behalf of the tobacco industry.

MS. LUTHER: Same objection.

A Both plaintiffs denied any knowledge of

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the two groups you just mentioned. They denied any knowledge of those two groups. They had no knowledge of them.

Q My question is: During the period of time from the 1940's through the 1960's, did any tobacco company, including the Tobacco Institute and CTR, but also the tobacco companies such as Philip Morris, R.J. Reynolds, and others, disseminate any information orally or through some sort of publication which refuted the health risks of smoking?

A According to my awareness research, the tobacco companies or the entities that you mentioned, which represented them, never denied smoking risks. They argued that there had not been proven a direct cause/effect relationship between smoking and cancer. And urged that additional research be done.

Q Within a reasonable degree of historical certainty, was Angie Dellavecchia exposed to cigarette advertisements that appeared on television?

A Excuse me?

Q Within a reasonable degree of historical certainty, was Angie Dellavecchia exposed to

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cigarette advertisements that appeared on television?

A Remember, the television ads were banned, beginning in the early '70's. Ms. Dellavecchia was at that time 31 years old, approximately. She was born in 1946. She was 30 -- figure it out. My math isn't good. The question was, was she exposed to television ads?

Q Correct.

A To recreate this model, the answer is in all probability, she was.

Q Within a reasonable degree of historical certainty, was Mary Farnan exposed to cigarette ads that appeared on television?

A Again, she was born a little later and during the short time of her life she was, but I hasten to add that those television ads to which she was exposed do not negate the significance of the other information relating to health risks to which she was also exposed.

Q I'm not asking you about the other information. I'm just asking you about cigarette advertisements right now. Within a reasonable degree of historical certainty, was Angie Dellavecchia exposed to cigarette advertisements

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that appeared on billboards?

A Again, I would answer: In all probability she was exposed but that was only one portion of the information, so long as we understand that my motion includes that this is only a portion and it doesn't negate the smoking and health risk information.

Q I'm just asking "yes" or "no" questions. I just want to know within a reasonable degree of historical certainty based on your expertise, was Mary Farnan exposed to cigarette ads that appeared on billboards?

A Again, I would answer the same: In all probability she was, but that exposure does not negate the exposure that she had with regard to the smoking and health risks, with regard to smoking and the difficulty of quitting once started.

Q Within a reasonable degree of historical certainty, was Angie Dellavecchia exposed to cigarette advertisements that appeared in newspapers and magazines?

A Both.

Q Both.

A Again, I would answer that in all

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probability she was. She was also exposed to all of the other information relating to smoking and health and the risks thereof and the difficulty of quitting once you started.

Q Okay.

A She was also exposed to --

Q I'm just asking you about the cigarette advertisements. I'm asking a very specific question.

Within a reasonable degree of historical certainty, was Mary Farnan exposed to cigarette advertisements that appeared in newspapers and magazines?

A Again, I would answer the same. In all probability she was, along with all the other information relating to smoking and health in her life.

Q Is it more likely than not that smoking is cause of premature death of anyone who smokes cigarettes?

MS. TYLER: Objection, outside the scope.

A I'm not a medical doctor.

Q Is your answer "yes" or "no"?

A I'm not a medical doctor. I can't

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comment on an expert --
Q Is your answer "I don't know"?
A I don't know. I'm not a medical doctor.
Q Have we discussed today all of your opinions that you expect to give at trial?
MS. TYLER: Objection to form.
A As I indicated to you, my research continues. Nothing is definitive. In terms of a conclusion of my studies, my research -- I continue to do research.
Q Have you been asked to comment upon the opinions expressed by other witnesses in this matter?
A As I indicated to you earlier, I asked for the deposition of any historians who may have testified in phase one for the plaintiffs' side and that included Mr. Eric Solberg, I believe.
Q What I'm asking is: Have you been asked to comment, have you been asked by defense to comment on the opinions expressed by other witnesses in this case?
A Not as yet.
(Pause in the proceedings.)
Q You stated that you have ongoing

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research that you'll be doing. Has defense counsel asked you to do further research with respect to the Engle case?

A No. This is my own initiative.

Q If you do additional research with respect to the Engle case, we request that we are notified of that.

A Fine.

MR. McCONNELL: That's a request that would be directed to the attorneys and you've already made it on the record. We will take it under advisement.

MS. MARKWITH: I don't have anything further, then.

MR. McCONNELL: Nothing from us.

MS. TYLER: No.

THE COURT REPORTER: Reading or waiving?

MS. TYLER: Reading.

THE COURT REPORTER: Can he read your copy?

(Discussion off the record.)

(Time noted: 12:25 p.m.)

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THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, TERRI BECKER, a Registered Professional Reporter and Notary Public for the State of Florida at Large, do hereby certify that I reported the deposition of THOMAS V. DiBACCO, Ph.D, the WITNESS, called by the PLAINTIFFS in the above-entitled action; that the witness was duly sworn by me; that the foregoing pages, numbered from 1 to 66, inclusive, constitute a true record of the deposition by said witness.

I further certify that I am not attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS MY HAND and official seal in the City of West Palm Beach, County of Palm Beach, State of Florida, this 1st day of September 1999.

____
TERRI BECKER, Registered
Professional Reporter and
Notary Public, State of Florida
at Large. My Commission expires
February 26, 2003.

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THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing certificate was acknowledged before me this _______________ day of__________________1999, by TERRI BECKER, who is personally known to me.

____
Notary Public, State of Florida.
My commission No.
Expires:

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I, THOMAS V. DiBACCO, do hereby certify that I have read the foregoing transcript of my deposition given on August 24, 1999; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

____
THOMAS V. DiBACCO

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I do hereby certify that the deposition of THOMAS V. DiBACCO, was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in the presence of the undersigned authority on the _____ day of _________ 1999.

____

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ERRATA SHEET

In Re: ENGLE V. R.J. REYNOLDS

DO NOT WRITE ON TRANSCRIPT
ENTER CHANGES HERE:

PAGE	LINE	CHANGE	REASON

____
THOMAS V. DiBACCO

THE STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I DO HEREBY CERTIFY THAT THOMAS V. DiBACCO appeared before me and stated that he has read his deposition; further, that this Errata Sheet was signed in my presence on this ________ day of ____________ ______.

____

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515 North Flagler Drive
West Palm Beach, Florida 33401
(561)835-0220

September 1, 1999

THOMAS V. DiBACCO, Ph.D
1295 North Lake Way
Palm Beach, Florida 33480

In Re: ENGLE V. R.J. REYNOLDS

Dear Dr. DiBacco:

At the conclusion of your deposition in the above-styled matter, you indicated that you wished to read your testimony. Herewith is a copy of your transcript, including an errata sheet, so that you may sign same.

We thank you for your cooperation and prompt attention to this matter.

Cordially yours,
KLEIN, BURY & ASSOCIATES

____
TERRI BECKER, Registered Professional Reporter, Notary Public, State of Florida At Large. My commission expires February 26, 1999.

CC: Maureen Markwith, Esq.
John A. Hoag, Esq.
Stephen McConnell, Esq.

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